

FIRST REQUEST

Request Confirmation

Request Information

Tracking Number : *EPA-HQ-2016-002082*

Requester Name : David N. DesRoches

Date Submitted : 12/14/2015

Request Status : Submitted

Description :

I would like to receive copies of any and all email communications related to PCBs between and among appointed officials, employees or contractors (collectively, "Agents") of the Environmental Protection Agency ("EPA"); and employees, contractors or lobbyists of Solutia, Inc.; Pharmacia; and Monsanto ("Named Companies"). The response should include all email exchanges between Agents of the EPA and other EPA Agents, as well as exchanges between EPA Agents and the Named Companies, that include mention of any or all of the following terms or phrases: polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol, or any other synonym or trade name that refers to polychlorinated biphenyls. If EPA business was performed by Agents using personal email addresses and not official U.S. government email addresses, I ask that these emails also be included in the response. I ask that the information be delivered in electronic format, if possible, in a searchable file, delivered either electronically or through a digital storage device. Thank you for your time and attention to this matter. david desroches

FIRST REVISION

From: DesRoches, David
Sent: Monday, June 27, 2016 1:10 PM
To: 'Courtnage, Robert'
Cc: Simons, Tom
Subject: RE: FOIA request CT NPR

Modified request (in bold):

I would like to receive copies of any and all email communications related to PCBs between and among appointed officials, employees or contractors (collectively, "Agents") of the Environmental Protection Agency ("EPA"); and employees, contractors or lobbyists of Solutia, Inc.; Pharmacia; and Monsanto ("Named Companies").

The response should include all email, **mail, letters, memoranda, written correspondence etc.**, between Agents of the EPA and other EPA Agents, as well as exchanges between EPA Agents and the Named Companies, that include mention of any or all of the following terms or phrases: polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol, or any other synonym or trade name that refers to polychlorinated biphenyls. **Regarding correspondence between EPA agents, please include only those that also reference Monsanto or Solutia or Pharmacia or any employee or contractor or lobbyist working on behalf of Named Companies.**

If EPA business was performed by Agents using personal email addresses and not official U.S. government email addresses, I ask that these emails also be included in the response.

I ask that the information be delivered in electronic format, if possible, in a searchable file, delivered either electronically or through a digital storage device.

REQUEST FOR OGIS INTERVENTION

DesRoches, David

From: DesRoches, David
Sent: Wednesday, August 31, 2016 12:46 PM
To: ogis@nara.gov
Subject: FOIA request to EPA by David DesRoches
Attachments: EXHIBIT E -EPA-HQ-2016-002082.pdf; EXHIBIT A - EPA-HQ-2016-002082.pdf; EXHIBIT B -HQ-2016-002082 Fee Waiver Response Letter.pdf; EXHIBIT C - HQ-2016-002082.pdf; EXHIBIT D - EPA HG-2016-002082.pdf

I submitted a FOIA request to the EPA on December 14, 2015, seeking information about PCBs and Monsanto/Pharmacia/Solutia (Attached as Exhibit A), and was subsequently granted a fee waiver (Exhibit B). Over the last nine months, I have spoken with them over the phone at least six times and every time the conversation is the same - they express concern about the scope, and I narrow the scope or agree to give them the time they need to comply.

After significantly narrowing the scope of my request and agreeing to give them as much time as could be reasonably expected, I broadened the type of records I was searching for in a revised request (Exhibit C). Then, finally in July 2016, the EPA they laid out a plan to begin looking for responsive records (Exhibit D, email chain, first email at the bottom) to the revised request. About a month later, I am contacted by someone at the EPA who admits to me over the phone that he is unfamiliar with the case, a man named Larry Gottesman. He says that the request is "impossible" and that it would "bring down the entire agency," which I responded with "isn't that a little hyperbolic?" and he agreed by saying, "maybe a little."

The EPA seems to understand the public interest in being responsive to this request, given the fee waiver request was granted. But now Mr. Gottesman says he needs to "talk to our attorneys" to see if they'll even comply. At not point during any conversation has EPA provided an estimated completion date.

I am attaching the relevant exhibits, which include the initial FOIA request and fee waiver request (Exhibit A); the fee waiver letter issued by the EPA (Exhibit B); the revised FOIA request that narrowed the scope while broadening the type of records sought (Exhibit C); the EPA's plan to begin looking for responsive records (Exhibit D); email communication between myself and Mr. Gottesman (Exhibit E).

If there's anything else you need from me, please do not hesitate to contact me either at this email, or either number below. It would be helpful if someone could respond to this email and let me know that this matter is being addressed. Thank you for your time and attention, I look forward to hearing from you.

david

David DesRoches
Education Reporter
WNPR | Connecticut Public Radio
1049 Asylum Ave.
Hartford, CT 06105
Desk: 860-275-7597
Cell: 203-522-0368
ddesroches@wnpr.org

FIRST DENIAL



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 28, 2016

David N. DesRoches
WNPR
1049 Asylum Ave.
Hartford, CT 06105

OFFICE OF
ENVIRONMENTAL INFORMATION

Re: Freedom of Information Act Request – EPA-HQ-2016-002082

Dear Mr. DesRoches:

This is in response to your request under the Freedom of Information Act (FOIA), to the U.S. Environmental Agency in which you were initially seeking:

copies of any and all email communications related to PCBs between and among appointed officials, employees or contractors (collectively, "Agents") of the Environmental Protection Agency ("EPA"); and employees, contractors or lobbyists of Solutia, Inc.; Pharmacia; and Monsanto ("Named Companies"). The response should include all email exchanges between Agents of the EPA and other EPA Agents, as well as exchanges between EPA Agents and the Named Companies that include mention of any or all of the following terms or phrases: polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol, or any other synonym or trade name that refers to polychlorinated biphenyls. If EPA business was performed by Agents using personal email addresses and not official U.S. government email addresses...

The program sought clarification of your request because it was not properly formulated. After a conversation with the program office you modified your request to:

1. EPA will conduct of search of all relevant email and documents from 1995 to present.
2. EPA will begin its search at EPA Headquarters offices including the Office of Enforcement and Compliance Assurance (OECA), Office of Land and Emergency Management (OLEM), the Office of Pollution Prevention and Toxics (OPPTS) and the Administrator's Office.
3. Search should be conducted at the Division Director level and above.


Upon review of the above clarification, your request is still very broad and does not reasonably describe the requested records. For example, you requested records from unnamed lobbyists and contractors, which we cannot identify. Nor can we readily determine who served as Division Director or higher management levels in multiple offices for the last twenty plus years due to factors such as reorganizations, name changes of organizations and staff temporarily acting in high management positions, none of which are systematically tracked by the Agency in a centralized manner. Additionally, your key words reference unnamed synonyms or trade names. Accordingly, we are unable to respond to your request.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals *received* after the 90-calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (301) 837-1996 or (877) 684-6448; or fax, (301) 837-0348.

Should you choose to appeal this determination, please be sure to fully address in your appeal all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(1).

If you have any questions concerning this determination, please contact me at (202) 566-1667.

Sincerely,


for Larry F. Gottesman
Agency FOIA Officer

OGIS RESPONSE

DesRoches, David

From: Mary Russ <mary.russ@nara.gov>
Sent: Friday, November 18, 2016 9:15 AM
To: DesRoches, David
Subject: Office of Government Information Services (OGIS) Case Number #201601440

Good Morning David,

Let me first start this email by apologizing for the the delay you have experience with OGIS. I was assigned your request for assistance #201601440 this morning, regarding your FOIA request to the Environment Protection Agency (EPA).

I reviewed all the documents in your file and I can see from your October 28 and November 9th emails that the EPA denied your request after months of back and forth conversations with the agency. The Acting Director of OGIS is out today, but I'd really like to have a phone call with the three of us so we can discuss your request, before I reach out to EPA.

Are you available on Monday November 21st for a phone call? If so, what time and number works best for you?

Again, I sincerely apologize for our delay.

KATE (GASTNER) RUSS

Facilitator
Office of Government Information Services



DesRoches, David

From: Mary Russ <mary.russ@nara.gov>
Sent: Monday, November 21, 2016 2:46 PM
To: DesRoches, David
Subject: Re: Office of Government Information Services (OGIS) Case Number #201601440

Good Afternoon David,

I wanted to summarize our conversation earlier to capture what OGIS will ask the EPA to do in an effort to find out who the previous Division Directors were for the 4 offices you listed:

- Search the emails of the **current** Division Directors for the Office of Enforcement and Compliance Assurance (OECA), Office of Land and Emergency management (OLEM), Office of Pollution Prevention and Toxics (OPPTS), and the Administrator's Office for the search terms you supplied.
- If the current Division Directors can provide the names of their predecessors, you want EPA to search those individual's email for the supplied search terms.
- If the current Division Directors can provide the names of lobbyists or contractors, you want EPA to search for emails that were initiated or received by the Division Director to those individual (lobbyist or contractor). As Nikki explained, EPA cannot search outside entities emails. But if the Division Director is able to identify a particular lobbyist that he had corresponded with, we can ask EPA to have the Division Director to search for any emails he exchanged with those individuals.

Also, were there any other documents you asked for besides emails? I can also state that if search of emails of the current Division Directors has any attachments related to the search terms, those documents should be considered for review under your FOIA request. And of course same with any former Division Director that the current Division Director identifies.

Please let me know if I've accurately summarized our discussion so I can call and present them with these ideas.

KATE (GASTNER) RUSS
Facilitator
Office of Government Information Services



FIRST APPEAL

DesRoches, David

From: DesRoches, David
Sent: Thursday, November 17, 2016 10:23 AM
To: hq.foia@epa.gov
Cc: ogis@nara.gov
Subject: Freedom of Information Act Appeal

November 17, 2016

EPA-HQ-2016-002082

This letter is an appeal to the letter from EPA dated October 28, 2016, denying the Freedom of Information Act request EPA-HQ-2016-002082. The EPA letter stated that the request "is still very broad and does not reasonably describe the requested records." The request is neither "overly broad" nor does it fail to "reasonably describe the requested records."

The records sought are very specific. The EPA denial letter states: "... your key words reference unnamed synonyms or trade names. Accordingly, we are unable to respond to your request." Because it is impossible to know, as a lay person, what names the EPA uses to refer to certain chemicals, the requester used language in the request to ensure the EPA looked for terms only known to the EPA. That does not mean that only those EPA-specific terms should be considered; but that those terms should be considered in conjunction with the specific terms mentioned in the request – "polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol..."

The time frame seeking the records is very specific – emails from 1995 to present and other forms of written communication from 1971 to present. The content is very specific – discussion of PCBs or related trade names along with discussion with or about Monsanto, Solutia and/or Pharmacia. The offices that should be included in the request are very specific – EPA Headquarters; the Office of Enforcement and Compliance; the Office of Land and Emergency Management; the Office of Pollution Prevention and Toxics, and the Administrator's Office.

The EPA denial letter states: "Nor can we readily determine who served as Division Director or higher management levels in multiple offices for the last twenty plus years due to factors such as reorganizations, name changes of organizations and staff temporarily acting in high management positions, none of which are systematically tracked by the Agency in a centralized manner." An internal problem within the EPA as it relates to "name changes of organizations" is not a sufficient reason for denial of a request. If organizations dealt with PCBs and the named companies (Monsanto, Solutia, Pharmacia) in some way, EPA should be able to find responsive records. EPA is essentially saying the request is too hard to fulfill, which is never a legal reason to deny a request under the Freedom of Information Act.

The denial letter from the EPA states: "...you requested records from unnamed lobbyists and contractors, which we cannot identify." The EPA's failure to keep records that it is obligated to keep under federal regulations is not a sufficient reason to not provide, or not even search for, said records. It was made clear that the requester would be comfortable receiving a partially complete compilation of records given concerns raised by the EPA. However, it must be stated again that the EPA's failure to keep records is not a valid reason for not fulfilling the request, especially when that is only one portion of the records sought.

This denial is especially troublesome given the nine months of good faith efforts made between several EPA officials and the requester. The initial request was made on December 12, 2015. Over the next nine months, negotiations were made with the EPA to narrow the scope of records sought. These negotiations were made in good faith, and EPA officials made it clear that they intended to fulfill the request. The last negotiation took place over the phone on July 13, 2016, in which EPA employees laid out a plan to respond to the request with the appropriate records. Then on August 14, 2016, Larry Gottesman of the EPA discussed concerns he had with the scope of the request. This discussion took place after at least six (6) prior discussions over the telephone spanning a nine-month period, along with several email exchanges, in which negotiations had already taken place and the scope of the request had been significantly narrowed and EPA officials agreed that the narrowing of the request was sufficient and the EPA would then commence finding responsive records. Then on October 28, 2016, EPA, under orders of Gottesman, denied the request.

Gottesman did not consider the negotiations already made under good faith for the previous nine months. It was made clear to him that the requester was not seeking an exact match of all criteria mentioned in the FOIA request, given the

concerns raised. The requester made clear he understood the challenge of being fully compliant, given the time scope and record-keeping inconsistencies at the EPA over time. The requester also made clear that he was willing to receive the records on a rolling basis and would take whatever records the EPA could reasonably provide on a monthly basis.

Nevertheless, Gottesman denied the request after a nine month period of negotiations, in which not a single responsive record was provided. The EPA has failed to even attempt to provide a single record sought. Considering the scope of the request, the requester has been extremely flexible with the EPA on compliance, to the point of it becoming a detriment to the request, in that it risked allowing the EPA to be nearly fully noncompliant because the requester would never know whether records were being omitted because he has no other access to those records and is unaware of their existence. Instead of providing all records and being fully compliant, or some records and being partially compliant, or a few records and being nearly fully noncompliant, EPA is fully denying the request.

This is not in the spirit of the good faith negotiations already made over nine months, nor is it in the spirit of transparency as outlined in President Barack Obama's 2009 memo to federal agencies in which he wrote, in part, "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA..." The records sought would provide a vital insight into how the EPA has worked with the chemical industry to manage PCBs, which the Stockholm Convention listed as one of the 12 worst manmade chemicals in the world. PCBs harm just about every function of the human body – respiratory, cardiovascular, gastrointestinal, hematological, musculoskeletal, hepatic, renal, endocrine, dermal, ocular, and other systemic effects. Towns, cities and school districts are suing the lone manufacturer of PCBs, Monsanto (and its spinoff companies, Solutia and Pharmacia) due to the chemical's long half-life and extreme toxicity.

Monsanto made billions of dollars through its PCB production. Now, taxpayers are spending billions of dollars to clean it up. Monsanto lied to corporations, such as GE, which bought the PCBs in good faith, and are now spending hundreds of millions to clean it up (Hudson River, Housatonic River, etc.). The public has a right to know how it got this bad, and these records will provide a much-needed look at this complicated and expensive problem.

Given the great, and unlawful, delay in EPA's response to the initial request, *time is of the essence in this matter* as the requested information is required for an ongoing investigation that is time-sensitive. Senators Chris Murphy of Connecticut and Edward Markey of Massachusetts have both stepped forward calling on the EPA to do more to combat this complicated PCB problem. Providing these records would be a step in the right direction, and help build on previous reporting that has shown the extent of PCB contamination, which could be getting children at school sick. The faster these records are produced, the quicker the public can be informed, and the more likely this problem will be resolved, possibly saving the lives of millions of children who are at risk every day due to PCB exposure.

It's expected the Agency will make a final decision on this appeal as soon as possible and certainly no later than the 20 working days mandated by FOIA. It's requested that you provide an estimated completion date for this appeal as required by FOIA. Thank you for your attention to this urgent matter.

David DesRoches
Education Reporter
WNPR | Connecticut Public Radio
1049 Asylum Ave.
Hartford, CT 06105
Desk: 860-275-7597
Cell: 203-522-0368
ddesroches@wnpr.org

SECOND DENIAL



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

February 21, 2017

David N. DesRoches
WNPR
1049 Asylum Ave.
Hartford, CT 06105

Re: Freedom of Information Act Appeal EPA-HQ-2017-001393 (Request No. EPA-HQ-2016-002082)

Dear Mr. DesRoches:

I am responding to your Freedom of Information Act (FOIA) appeal, dated November 17, 2016. You appealed the October 28, 2016 decision of Larry Gottesman (decision), which denied as improper the FOIA request you submitted to EPA on December 14, 2015. Your December 14, 2015 FOIA request sought:

copies of any and all email communications related to PCBs between and among appointed officials, employees or contractors (collectively, "Agents") of the Environmental Protection Agency ("EPA"); and employees, contractors or lobbyists of Solutia, Inc.; Pharmacia; and Monsanto ("Named Companies"). The response should include all email exchanges between Agents of the EPA and other EPA Agents, as well as exchanges between EPA Agents and the Named Companies that include mention of any or all of the following terms or phrases: polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol, or any other synonym or trade name that refers to polychlorinated biphenyls. If EPA business was performed by Agents using personal email addresses and not official U.S. government email addresses ...

The program sought clarification of your request because it was not properly formulated. After conversations with the program office you modified your request to:

1. EPA will conduct of search of all relevant email and documents from 1995 to present.
2. EPA will begin its search at EPA Headquarters offices including the Office of Enforcement and Compliance Assurance (OECA), Office of Land and Emergency Management (OLEM), the Office of Pollution Prevention and Toxics (OPPTS) and the Administrator's Office.
3. Search should be conducted at the Division Director level and above.

EPA issued its decision on October 28, 2016, stating that your request was denied because your request is still very broad and does not reasonably describe the requested records. In your appeal, you

challenge the Agency's closure of your request, which was based on the fact that you did not reasonably describe the records sought and that your request was overly broad.

On November 22, 2016, the Office of Government Information Service (OGIS) notified EPA, in email, that you further narrowed your request to the following:

- Search the emails of the current Division Directors for the Office of Enforcement and Compliance Assurance (OECA), Office of Land and Emergency management (OLEM), Office of Pollution Prevention and Toxics (OPPTS), and the Administrator's Office for the search terms Mr. DesRoches supplied.
- If the current Division Directors can provide the names of their predecessors, EPA will search those individual's email for the supplied search terms
- If the current Division Directors can provide the names of lobbyists or contractors, EPA will search for emails that were initiated or received by the Division Director to those individual (lobbyist or contractor)
- Mr. DesRoches also mentioned his request included written correspondence back to 1971. He agreed to accept any written correspondence the current Division Directors may have back as far as they can produce.

I have carefully considered your request, EPA's decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, denied. However, I would like to provide a final opportunity to clarify and narrow your request in light of your past discussions with OPPT. Therefore, I am remanding your request to OPPT, pursuant to 40 C.F.R. §2.104(k), to provide a revised opportunity for you to clarify your request. OPPT will contact you within the next ten business days.

Requirements for Making a Request

FOIA provides that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). Records are reasonably described if the description "enable[s] a professional employee of the agency who was familiar *with the subject area of the request* to locate the record with a reasonable amount of effort." Marks v. United States, 578 F.2d 261, 263 (9th Cir. 1978) (emphasis added) (internal quotations and citation omitted). Courts have explained that "[t]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters." Assassination Archives & Research Center, Inc. v. CIA, 720 F. Supp. 217, 219 (D.D.C. 1989). Courts have also held that agencies are not required to conduct wide-ranging, "unreasonably burdensome" searches for records. See AFGE v. U.S. Dep't of Commerce, 907 F.2d 203, 209 (D.C. Cir. 1990) (holding that "while [plaintiff's requests] might identify the documents requested with sufficient precision to enable the agency to identify them . . . it is clear that these requests are so broad as to impose an unreasonable burden upon the agency," because agency would have "to locate, review, redact, and arrange for [the] inspection [of] a vast quantity of material").

EPA's regulations also state that "[y]our request should reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them" and "[w]henver possible,

your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter.” 40 C.F.R. §2.102(c).

Based on my review of the description of the records you are seeking, the original request, the request modified by you, and the request modified based on your discussion with OGIS, I find that your request does not reasonably describe the records you are seeking under the above standards and would result in an unduly burdensome search.

First, your request as modified still does not provide any subject matter beyond PCB, or other synonym or trade name. Taking into account the 22-year time-frame, subject matter experts are unable to locate responsive records with a reasonable amount of effort. Therefore, your request, as written, is unduly burdensome to the Agency. This burden is even greater because you are seeking all incoming and outgoing emails between an undefined number of EPA employees and three outside companies, in addition to any internal discussions regarding PCBs and these companies. A request for all incoming, outgoing, and internal email records without any further specificity requires staff to conduct a lengthy, burdensome, intra-agency review and coordination processes with multiple Regions and headquarters offices for numerous documents relating to far-ranging, highly sensitive matters, including law enforcement matters, under distinct environmental statutes.

Second, you state in your appeal that “the requester would be comfortable receiving a partially complete compilation of records given concerns raised by the EPA.” Additionally, in your communication with OGIS, you indicated that EPA can select the names of lobbyist or contractors. EPA does not have an obligation to rewrite requests to make the request proper or to provide a response requester is “comfortable receiving.”

Third, in your communication with OGIS, you narrowed your requests to written communications “back as far as [EPA] can produce.” EPA must have a defined time frame to conduct a proper search.

I find that it is possible to provide further specificity to the EPA regarding the requested records in a manner that would reasonably describe a request that would not result in an unduly burdensome search.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (“OGIS”) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348.

David N. DesRoches
Appeal EPA-HQ-2017-001393 (Request No. EPA-HQ-2016-002082)
Page 4 of 4

Should you have any questions concerning this matter, please contact Joan Kaminer of my staff at (202) 564-0334 or at kaminer.joan@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "for Lynn King", written over the printed name "Kevin Miller".

Kevin Miller
Assistant General Counsel
General Law Office

SECOND REVISION

From: DesRoches, David
Sent: Wednesday, March 29, 2017 6:11 PM
To: 'Sherlock, Scott' <Sherlock.Scott@epa.gov>
Cc: 'Winchester, Erik' <Winchester.Erik@epa.gov>; 'Shannon, Julie' <Shannon.Julie@EPA.GOV>; 'Cestone, Paul' <Cestone.Paul@epa.gov>
Subject: RE: FOIA 2016-002082 and FOIA Appeal 2017-001393

Scott,

My apologies for taking a while to get back to you. I've compiled a list of people (attached), as a place to start, whose communications (emails and other written forms of communication) I'm seeking. These names should be searched for along with the other criteria laid out in the original FOIA request. This would further narrow this request, however, I would like to keep the request open while I search for other relevant names.

It's been about 15 months since this request was filed, and I have not received any records. I know we are all eager to see it fulfilled. I appreciate your willingness to work with me on this.

Please let me know if you agree to A) Search for responsive records to include these names; and B) Keep this FOIA request open while I search for additional names.

Thank you for your time and attention to this matter.

EPA

1. Don Clay, Asst. Administrator for Solid Waste and Emergency Response, circa 1990
2. William Reilly, administrator, circa 1990
3. Linda J. Fisher, former Assistant Administrator, Office of Pollution Prevention, Pesticides, and Toxic Substances
4. Marianne Horinko, Acting Administrator, circa 2003
5. Jim Jones, Assistant Administrator, Office of Chemical Safety Pollution and Prevention, until 2016
6. Mathy Stanislaus, assistant administrator for the Office of Solid Waste, until 2016
7. Jared Blumenfeld, administrator for EPA's Pacific Southwest Region, until 2016
8. Mark Maddaloni, EPA toxicologist, 1991 to present
9. William D. Ruckelshaus (former administrator for the EPA)
10. Lidia Watrud, (EPA's Environmental Effects Laboratory, Western Ecology Division)

Monsanto

1. Richard J. Mahoney, CEO, circa 1990
2. Jack Watson, staff lawyer
3. Margaret Miller, chemical laboratory supervisor
4. Josh King, director of global communications in the Washington, DC office

5. Michael (Mickey) Kantor, board member
6. Marcia Hale, director of international government affairs

Eastman (owner of former Monsanto PCB plant, also names in PCB lawsuits)

1. Nancy J. Ekart, Senior Environmental Representative, Environmental Affairs,

Other (These names have been associated with PCB-related lobbying efforts)

1. Clifford "Kip" Howlett, Jr., Executive Director, Chlorine Chemistry Council
2. M. L. Mullins, Vice President-Regulatory Affairs, Chemical Manufacturers Association
3. Mary E. Bernhard, Senior Manager of Environment Policy, U.S. Chamber of Commerce

THIRD DENIAL



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 22 2017

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

David N. DesRoches
WNPR
1049 Asylum Avenue
Hartford, Conn. 06105

**Re: Freedom of Information Act Appeal EPA-HQ-2017-001-393
(Request No. EPA-HQ-2016-002082)**

Dear Mr. DesRoches:

This letter concerns the above-referenced Freedom of Information Act request, received by the U.S. Environmental Protection Agency Freedom of Information Office in which you are seeking:

"[C]opies of any and all email communications related to PCBs between and among appointed officials, employees or contractors (collectively, "Agents") of the Environmental Protection Agency ("EPA"); and employees, contractors or lobbyists of Solutia, Inc.; Pharmacia; and Monsanto ("Named Companies"). The response should include all email exchanges between Agents of the EPA and other EPA Agents, as well as exchanges between EPA Agents and the Named Companies that include mention of any or all of the following terms or phrases: polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol, or any other synonym or trade name that refers to polychlorinated biphenyls."

The agency determined that your request did not reasonably describe the records you are seeking in a way that will permit the EPA employees to identify and locate them. The EPA's FOIA regulations explain:

"Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c).

The agency sent you a letter dated February 21, 2017, which provided you the opportunity to clarify the records that you are seeking so that the EPA could process your request. You responded on March 29, 2017. The agency has reviewed the revised request and we believe that the request as modified continues not to reasonably describe the records you are seeking under the above standards and would result in an unduly burdensome search.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460. Only items mailed through the United

States Postal Service may be delivered to 1200 Pennsylvania Avenue. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001.

Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The agency will not consider appeals *received* after the 90 calendar-day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal."

Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Symmes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian Symmes
Acting Director
National Program Chemicals Division
Office of Pollution Prevention and Toxics

SECOND APPEAL

July 7, 2017

National Freedom of Information Office
U.S. EPA
1200 Pennsylvania Avenue, N.W. (2822T)
Washington, D.C. 20460

Sent via email pdf attachment to: hq.foia@epa.gov

**Appeal to EPA decision Re: "FOIA Appeal EPA-HQ-2017-001-393"
(Request No. EPA-HQ-2016-002082); Request for Estimated Completion Date**

This letter is an appeal to the letter from EPA dated May 22, 2017, denying the Freedom of Information Act Appeal PA-HQ-2017-001-393 (EPA Request No. EPA-HQ-2016-002082). The EPA had initially denied the appeal, but remanded it to the Office of Pollution Prevention and Toxics (OPPT) for further review. After a phone conversation with Scott Sherlock, an attorney advisor for OPPT, the requester was told to find specific names of people to help further narrow the request. The requester did so in an emailed attachment dated March 29, 2017, which represented the third significant narrowing of the original request, which was dated December 14, 2015. The list included ten names of current or former EPA employees; six names of current or former Monsanto employees; one name of an Eastman employee; and three other names of lobbyists for the chemical industry.

This further narrowing risked the request to be returned with no responsive records, however the EPA's second denial letter stated that "the request as modified continues not to reasonably describe the records you are seeking... and would result in an unduly burdensome search." This response is especially confusing, since it contradicted the direction given to the requester by Mr. Sherlock to search for specific names, which would sufficiently narrow the request and make it compliant with the FOIA regulations.

The records sought are very specific. Because it is impossible to know, as a lay person, what names the EPA uses to refer to certain chemicals, the requester used language in the request to ensure the EPA looked for terms only known to the EPA. That does not mean that only those EPA-specific terms should be considered; but that those terms should be considered in conjunction with the specific terms mentioned in the request – "polychlorinated biphenyls, PCB, PCBs, Aroclor, Arocolor, Therminol..."

The time frame seeking the records is very specific – emails from 1995 to present and other forms of written communication from 1971 to present. The content is very specific – discussion of PCBs or related trade names along with discussion with or about Monsanto, Solutia and/or Pharmacia. The offices that should be included in the request are very specific – EPA Headquarters; the Office of Enforcement and Compliance; the Office of Land and Emergency Management; the Office of Pollution Prevention and Toxics, and the Administrator's Office.

After further narrowing the request at the direction of Mr. Sherlock, the request now identified specific names to be searched. There are no other reasonable methods the requester could use to identify the specific records sought. The requester has no access to EPA files or record-keeping systems, so it is otherwise impossible to further narrow this request.

Considering the scope of the request, the requester has gone far beyond the requirements of the FOIA's text or regulations to meet the EPA's demands, to the point of it becoming a detriment to the request, in that it risked allowing the EPA to be noncompliant because the requester would never know whether records were being omitted because he has no other access to those records and is unaware of their existence. Instead of providing all records and being fully compliant, or some records and being partially compliant, or a few records and being nearly fully noncompliant, EPA is fully denying the request.

The initial request was made on December 14, 2015. Over the next nine months, negotiations were made with the EPA to narrow the scope of records sought. These negotiations were made in good faith, and EPA officials made it clear that they intended to fulfill the request. The last of the first round of negotiations took place over the phone on July 13, 2016, in which EPA employees laid out a plan to respond to the request with the appropriate records. Then on August 14, 2016, Larry Gottesman of the EPA discussed concerns he had with the scope of the request. This discussion took place after at least six (6) prior discussions over the telephone spanning a nine-month period, along with several email exchanges, in which negotiations had already taken place and the scope of the request had been significantly narrowed and EPA officials agreed that the narrowing of the request was sufficient and the EPA would then commence finding responsive records. Then on October 28, 2016 – as directed by Mr. Gottesman – EPA denied the request. An appeal was filed, which was subsequently denied but remanded to OPPT, which subsequently claimed the additional narrowing was not sufficient, despite the narrowing being the result of specific directions given to the requester by Mr. Sherlock during a March 2, 2017, phone conversation.

The EPA has never provided an estimated completion date as required by FOIA, see, e.g., 5 U.S.C. § 552(a)(7)(B)(ii), despite being asked several times to provide one. This matter has been ongoing for over 18 months, and during this time not a single responsive record has been provided, despite nine months of good-faith efforts made between several EPA officials and the requester, and despite additional negotiations made in March 2017.

Monsanto made billions of dollars through its PCB production. Now, taxpayers are spending billions of dollars to clean it up. Monsanto hid the truth about PCBs from corporations, such as GE, which purchased the PCBs from Monsanto in good faith, and are now spending hundreds of millions to clean it up (Hudson River, Housatonic River, etc.). The public has a right to know how it came to be this bad, and these records will provide a much-needed look at this complicated, expensive and dangerous problem.

Given the great, and unlawful, delay in EPA's response to the initial request, *time is of the essence in this matter* as the requested information is required for an ongoing investigation that is time-sensitive. Senators Chris Murphy of Connecticut and Edward Markey of Massachusetts have both stepped forward calling on the EPA to do more to combat this PCB problem. Providing these records would be a step in the right direction, and help build on previous reporting that has shown the extent of PCB contamination, which could be causing children at school to develop significant learning disabilities and developmental delays. At public schools across the United States of America, the number of students with learning disabilities and developmental delays continues to rise, and every day these records remain illegally withheld, children remain at risk. Providing the requested records could help policy-makers recognize where the fault lies and establish a framework for fixing the problem.

The importance of the release of these records cannot be overstated. The faster these records are produced, the quicker the public can be informed, and the more likely this problem will be resolved, possibly saving the lives of millions of children who are at risk every day due to PCB exposure.

It's expected the EPA will make a final decision on this appeal as soon as possible and certainly no later than the 20 working days mandated by FOIA. It's requested that you provide an estimated completion date for this appeal as required by FOIA. Thank you for your attention to this urgent matter.



David DesRoches
WNPR
1049 Asylum Ave.
Hartford, CT 06109